

## REMARKS

This amendment is submitted in response to the final Office Action mailed on June 29, 2005. Claims 1-2 and 4-18 are pending in this application. Claim 3 was previously canceled. In the Office Action, Claims 1-2 and 4-18 are rejected under 35 U.S.C. §112, first paragraph, Claims 1-2, 4-9, 11-14 and 16-18 are rejected under 35 U.S.C. §102 and Claims 10 and 15 are rejected under 35 U.S.C. §103. In response Claims 1, 10 and 15-16 have been amended, Claim 19 has been added and Claims 6-9, 13 and 17-18 have been canceled. These amendments do not add new matter. In view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1-2 and 4-18 are rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. In response, Claim 1 has been amended to address the informalities cited by the Patent Office. Based on at least these noted reasons, Applicants believe that Claims 1-2 and 4-18 fully comply with 35 U.S.C. §112, first paragraph. Accordingly, Applicants respectfully request that the rejection of Claims 1-2 and 4-18 under 35 U.S.C. §112 be withdrawn.

In the Office Action, Claims 1-2, 4-9, 11-14 and 16-18 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,897,599 to Fond ("*Fond*"). Applicants respectfully disagree with and traverse this rejection for at least the reasons set forth below.

Applicants have amended independent Claim 1 to include, in part, the second sheet is made of filter paper or of non-woven fiber or plastic material having a sufficiently tight mesh to retain water in the cartridge until the overpressure is reached and allows the beverage to pass through it when the overpressure of 0.1 bar is reached. These amendments as discussed above are fully supported in the specification, for example, at page 4, lines 7-34.

In contrast, *Fond* fails to disclose or suggest every element of the present claims. For example, *Fond* fails to disclose or suggest capsule with a second sheet made of filter paper or of non-woven fiber or plastic material having a sufficiently tight mesh to retain water in the cartridge until the overpressure is reached and allows the beverage to pass through it when the overpressure of 0.1 bar is reached as required by Claim 1. In other words, *Fond* fails to disclose a capsule with the second sheet material that can provide a delayed effect until an overpressure of at least 0.1 bar is reached. *Fond* only teaches a second sheet that is a "tear face" with a

character of a foil. See, *Fond*, column 5, lines 49-50. Preference is give to a foil of aluminum or plastic that is impermeable to oxygen. See, *Fond*, column 5, lines 51-52.

Moreover, *Fond* discloses that “materials employed for forming the tear face should be such that, when impinged upon the relief surface element the tear faces, in accordance with the invention, is embodied to withstand a pressure in the interior of the cartridge above 1 bar, and particularly such as a pressure within the range of from 2 bar to 15 bar, prior to breaking and tearing, such providing for the phases of extraction discussed further below.” (emphasis added.) See, *Fond*, column 5, lines 37-44. As a result, *Fond* not only fails to disclose or suggest Claim 1, it actually teaches away from it.

Indeed, *Fond* only teaches a closed cartridge with a bottom foil or cover that is meant to be opened only when contacting and tearing against projections of the holder of the machine. See, *Fond*, column 4, lines 8-15. When the pressure reaches a value of between 2 to 15 bars, the cover is pressed against the projections and it reaches its breaking stress and forms a plurality of openings. See, *Fond*, Claim 1 and column 7, lines 10-25. Consequently, the lower face of the cartridge is not designed to break under an overpressure of 1 bar or less that builds up in the cartridge. However, the present claims provide, in part, a simpler cartridge that opens by the internal pressure effect of the fluid alone and not by any external opening means.

When considering the presence of paper fibers, *Fond* only mentions the use of a “multi-layer” that combines paper fibers and aluminum. See, *Fond*, column 5, line 61 to column 6, line 23. However, in *Fond*, the layer of paper fibers or non-woven material should not be the tear face but should instead be an additional layer combined with the tear face. This additional layer should keep, as taught by *Fond*, the face integrally intact as the tear face (e.g. aluminum or plastic) tears. Thus, the paper fiber layer in *Fond* has a support and filtering function whereas the second sheet of the present claims has, for example, a retarded or delayed opening function and resists up to a certain pressure before the beverage is released. As a result, *Fond* fails to teach or suggest a second sheet that is made of filter paper or meshed plastic or fiber material that can provide a retarded opening effect before allowing the beverage to pass through as required by Claim 1.

For the reasons discussed above, Applicants respectfully submit that Claim 1 and Claims 2, 4-9, 11-14 and 16-18 that depend from Claim 1 are novel, nonobvious and distinguishable

from the cited reference. Accordingly, Applicants respectfully request that the rejection of Claims 1-2, 4-9, 11-14 and 16-18 under 35 U.S.C. §102(b) be withdrawn.

Claims 10 and 15 are rejected under 35 U.S.C. §103 as being unpatentable over *Fond* in view of U.S. Patent No. 4,253,385 to Illy ("*Illy*"). Applicants respectfully submit that the patentability of Claim 1 renders moot the obviousness rejections of Claims 10 and 15. In this regard, the cited art fails to teach or suggest the elements of Claims 10 and 15 in combination with the novel elements of Claim 1.

Further, *Illy* fails to cure the deficiency of *Fond* because of the filter sheets of *Illy* are permeable to water at atmospheric pressure. The retarded opening effect cannot be obtained with *Illy*. Therefore, if *Fond* were modified with the filter sheet of *Illy* and the aluminum or plastic tear face of *Fond* removed, the retarded effect would not be obtained because the filter sheet of *Illy* would not be sufficient by itself to retain a pressure inside the capsule.

An advantage of the construction of the present invention is that it considerably reduces the complexity of the capsule because no tear face such as the aluminum or plastic of *Fond* is used while the second material of the present claims can deliver the retarded effect with a rise in pressure in the capsule. Another advantage of the present invention is that there is no more need for external relief/recessed elements that must puncture or rupture the capsule's tear face further simplifying the system.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 10 and 15 be reconsidered and the rejection be withdrawn.

Applicants further note that Claim 19 has been newly added. The amendment is fully supported in the specification, for example, at page 4, lines 7-34. Applicants respectfully submit that Claim 19 should be allowed.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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